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9 **UNITED STATES DISTRICT COURT**
10 **DISTRICT OF NEVADA**

11 Evaristo Jonathan Garcia,

12 Petitioner,

13 v.

14 W.A.. Gittere, *et al.*,

15 Respondents.
16

Case No. 2:17-cv-03095-JCM-CWH

**Unopposed Petitioner's Motion for
Extension of Time to File Reply
(First Request)**

17 Petitioner Evaristo Jonathan Garcia respectfully moves this Court for an
18 extension of time of 60 days, up to and including July 7, 2025, to file Petitioner's
19 Reply.

20 This is Garcia's first request to extend this deadline. This request for an
21 extension is made in good faith and not solely for the purpose of delay. Good cause
22 exists for the requested extension because of (1) the complex and voluminous record
23 in this case, (2) the need for newly assigned counsel to thoroughly review the
24 materials; and (3) counsel's obligations with other matters.

25 Respondents do not oppose this request. Given the complexity of this case and
26 the procedural posture, this extension is necessary to ensure effective assistance of
27 counsel and allow for a comprehensive Reply.

1 **POINTS AND AUTHORITIES**

2 **I. Brief Procedural History**

3 After a six-day jury trial that commenced on July 8, 2013, Evaristo Garcia was
4 found guilty of second-degree murder with use of a deadly weapon.¹ He was sentenced
5 to two consecutive terms of ten years to life.²

6 On December 20, 2017, petitioner Evaristo Garcia filed a *pro se* petition for
7 writ of habeas corpus and moved for appointment of counsel.³

8 Nine days later, this court granted Mr. Garcia's motion and appointed
9 counsel.⁴ The court ruled that appointment of counsel is in the interests of justice due
10 to, among other things, the following:

11 (1) petitioner's lengthy sentencing consisting of two
12 consecutive sentences of life with the possibility of parole
13 after a minimum of ten years on each sentence, on his
14 conviction, following a jury trial, of second-degree murder
15 with the use of a deadly weapon; (2) the very limited ability
16 demonstrated by petitioner in articulating his claims in
17 this and the prior action, with petitioner presenting more
18 or less bare documents covering copies of prior state court
19 filings and/or orders; (3) the prospect that petitioner's
20 access to Nevada specific legal materials and inmate
21 assistance while incarcerated in Arizona may be more
22 limited than the resources that may have been available to
23 him while held within Nevada; and (4) the complexity of
24 the potential procedural and substantive issues presented,
25 including those potentially arising with respect to *Martinez*
26 *v. Ryan*, 566 U.S. 1 (2012), following upon counsel not being
27 appointed in the state post-conviction proceedings.⁵

24 ¹ ECF No. 36

25 ² *Id.*

26 ³ ECF Nos. 1-1, 5.

27 ⁴ ECF No. 4.

⁵ *Id.* at 1–2.

1 AFPD Megan Hoffman was appointed on April 5, 2018.⁶ On May 10, 2018,
2 AFPD S. Alex Spelman entered an appearance on behalf of Mr. Garcia.⁷ An amended
3 petition for writ of habeas corpus was filed on February 14, 2019.⁸ On February 25,
4 2019, this court entered an order sealing this case.⁹ On April 4, 2019, a stay was
5 entered to allow Mr. Garcia to exhaust his claims in Ground 1 in state court.¹⁰

6 Over five months later, AFPD Emma Smith entered her appearance as counsel
7 for Mr. Garcia,¹¹ followed by AFPD Jeremy Baron on October 8, 2019¹² and AFPD
8 Amelia Bizzaro on October 9, 2020.¹³ On June 27, 2022, Ms. Bizzaro filed a second
9 Notice of Appearance.¹⁴

10 This case was reopened on September 23, 2022.¹⁵ A second amended petition
11 was filed on December 6, 2022.¹⁶ Respondents filed a motion to dismiss on May 22,
12 2023,¹⁷ along with exhibits totaling thousands of pages.¹⁸

13 I joined the Office of the Federal Public Defender in October 2024 and entered
14 my appearance in this matter on October 30, 2024.¹⁹ An Order denying Respondents'

16 ⁶ ECF No. 9.

17 ⁷ ECF No. 10.

18 ⁸ ECF No. 18.

19 ⁹ ECF No. 22.

20 ¹⁰ ECF No. 26.

21 ¹¹ ECF No. 27.

22 ¹² ECF No. 28.

23 ¹³ ECF No. 29.

24 ¹⁴ ECF No. 30.

25 ¹⁵ ECF No. 33.

26 ¹⁶ ECF No. 36.

27 ¹⁷ ECF No. 42.

¹⁸ ECF Nos. 43 – 47.

¹⁹ ECF No. 66.

1 motion to dismiss in part was entered on the same date.²⁰ Respondents' Answer to
2 the sealed second amended petition was filed on April 8, 2025.²¹

3 The record in this case is extensive and voluminous. It spans nearly 20 years
4 dating back to 2006, involves a lengthy pre-trial history, a 2013 six-day jury trial on
5 a murder charge, about four years of state appellate and post-conviction proceedings
6 thereafter, and an additional four years of proceedings following the commencement
7 of this matter and the return to state court. Plus, as this court noted, the potential
8 procedural issues in this case are complex, given Mr. Garcia's lack of representation
9 for his state habeas proceedings.²²

10 The additional period of time is necessary in order to effectively represent Mr.
11 Garcia. This motion is filed in the interests of justice and not for the purposes of
12 unnecessary delay.

13 **II. Good Cause Exists for the Requested Extension**

14 Under Rule 6 of the Federal Rules of Civil Procedure, courts have broad
15 discretion to grant extensions of time upon a showing of good cause.²³ Rule 6 is to be
16 liberally construed to facilitate resolution of cases on the merits.²⁴

17 The attorney that had been working on this case, Ms. Bizzaro, took the case
18 through the state court proceedings. She led the litigation in both state post-
19 conviction and federal habeas proceedings up to my appearance in October 2024. I
20 am the sixth AFPD assigned to this case. I did not draft any of the prior pleadings
21 and did not participate in the litigation leading up to this point.

23 ²⁰ ECF No. 67.

24 ²¹ ECF No. 74

25 ²² See ECF No. 4 at 1–2.

26 ²³ *Jenkins v. Commonwealth Land Title Ins. Co.*, 95 F.3d 791, 795 (9th Cir.
27 1996).

²⁴ *Ahanchian v. Xenon Pictures, Inc.*, 624 F.3d 1253, 1259 (9th Cir. 2010).

1 An extension of time is necessary so that I can review the voluminous file and
2 procedural history of this case. I have not conducted that review due to obligations in
3 other matters and the continuing demands of transitioning into habeas practice and
4 managing a full caseload. Preparing a Reply requires extensive research into
5 procedural default doctrines, the *Brady* violation claim, and a *Martinez* argument,
6 and this case has a complex procedural history spanning multiple courts and
7 thousands of pages of records.

8 Notably, my other commitments were time consuming and required significant
9 engagement. I was responsible for completing and filing an Amended Petition in
10 *Cotton v. Gittere*, et al., Case No. 3:23-cv-00570-MMD-CSD which was due and filed
11 on April 14, 2025. In addition, I presented oral argument in *Keller v. Garrett*, et al.,
12 No. 3:22-cv-00481-ART-CLB, on April 22, 2025, a case that took significant
13 preparation because I had not drafted any of the briefs and, having recently joined the
14 Office of the Federal Public Defender, was not familiar with the case. I had an
15 opposition to a motion to dismiss due on April 4, 2025 in *Chaiyakul v. Warden of High*
16 *Desert State Prison*, et al., Case No. 2:22-cv-01650-RFB-MDC, as well as a Certificate
17 of Appealability due on April 23, 2025 in the matter of *Garcia vs. Gittere*, Case No.
18 2:17-cv-03095-JCM-CWH.

19 I have responses to six (6) separate sets of Interrogatories and Requests for
20 Production of Documents propounded in the matter of *Harris v. Cooke*, et al., Case
21 No. 3:22-cv-00019-ART-CSD, due on May 14, 2025; an Opposition to a Motion to
22 Dismiss due on May 16, 2025 in the matter of *Benavides v. Williams*, et al., Case No.
23 2:23-cv-00576-ART-MDC; and an Amended Petition due on May 23, 2025 in the
24 matter of *Crawley v. Breitenbach*, et al., Case No. Case No. 3:24-cv-00252-ART-CLB.

25 I have an Opposition to a Motion to Dismiss currently due on June 6, 2025 in
26 the matter *Christy v. Hutchins*, et al., Case No. 2:21-cv-00132-APG-BNW. Plus, I am
27 also in the process of preparing for an Evidentiary Hearing on June 13, 2025 in the

1 matter of *Taylor v. Bean, et al.*, Case No. 2:21-cv-00948-ART-DJA.

2 I have an Amended Petition due on June 18, 2025 in the matter of *Engle v.*
 3 *State*, et al., Case No. 3:24-cv-00257-MMD-CSD, and a Reply due on June 27, 2025 in
 4 the matter of *Holman v. Johnson, et al.*, Case No. 2:21-cv-00266-APG-NJK. I have an
 5 Amended Petition due on July 8, 2025 in the matter of *Raspperry v. Bean*, et al., Case
 6 No. 2:25-cv-00110-RFB-BNW.

7 Because of these overlapping deadlines and obligations, I have not yet been
 8 able to complete the research and analysis required to adequately prepare the Reply
 9 in this matter. I also intend to meet with Mr. Garcia prior to completing the Reply.

10 Given the scope of the record, the complexity of the legal questions raised, and
 11 the need for direct communication with Mr. Garcia, an initial unopposed extension of
 12 60 days is necessary.

13 On May 7, 2025, Deputy Attorney General Brooke Georguson was contacted
 14 via email and stated that she did not object to the extension. The lack of objection
 15 should not be construed as a waiver of any procedural defenses.

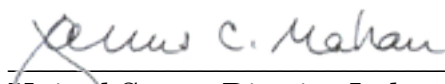
16 This motion is filed in the interests of justice and to protect Mr. Garcia's rights,
 17 not for purposes of delay. Accordingly, Petitioner respectfully requests an extension
 18 of time of 60 days, up to and including July 7, 2025, to file Petitioner's Reply.

19 Dated: May 7, 2025.

20 Respectfully submitted,
 21 Rene L. Valladares
 22 Federal Public Defender

23 /s/ Andréa L. Vieira
 24 Andréa L. Vieira
 25 Assistant Federal Public Defender

26 IT IS SO ORDERED:

27 
 United States District Judge

Dated: May 9, 2025